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December 5, 2011

E. Spaulding Clark
Township Supervisor
Scio Township
827 N. Zeeb Road
Ann Arbor, MI 48103-1562

Re: Revised Draft Interlocal Agreement creating the Mid-Washtenaw Fire Department

Dear Supervisor Clark:

In response to your memorandum dated December 1, 2011, I have prepared the enclosed revised draft interlocal agreement (dated December 2, 2011). A redlined document highlighting the changes from the previously circulated draft (dated November 22, 2011) also is attached.

I have incorporated the changes requested in your memorandum and corrected other grammatical items in the document. I thought it was important to highlight the following:

- For **Section 4.06** of the draft agreement, your memorandum indicated that: "A Treasurer is added as an officer, however, nowhere in the document are any duties or responsibilities of the position of Treasurer spelled out." In response, I have added the following two sentences to the December 2nd draft: "The Fire Board also may elect a Treasurer as an additional officer of the Fire Board. . . The officers of the Fire Board shall perform duties as specified in this Agreement and as otherwise determined by the Fire Board."
- For **Section 4.09** of the draft agreement, your memorandum indicated that: "The language in the second sentence about quorums and voting that says 'serving at the time of the vote' was unclear to a number of our participants. That is, the issue of whether a majority of a quorum can act, or whether a bare quorum requires a unanimous vote to act. It is suggested that the language be clarified so as to avoid debate, and/or an example be used to further explain what is intended, given an initial Board of 9 members." In response, I have attempted to clarify the language. To provide an example, for a Fire Board with nine members appointed and serving, at

least five members would be required to be present at a meeting for the Fire Board to transact any business. If seven members were in attendance, five affirmative votes would be required for any action. If five members were in attendance, five affirmative votes would be required for any action. In other words, for a full nine-member board, five affirmative votes always would be required for any action.

- For **Section 5.01(h)** of the draft agreement, your memorandum indicated: “after the word ‘furnishing’ use the words ‘emergency medical services, rescue and ambulance services.’”. In response, I have suggested that the paragraph read as follows: “Operating or furnishing ambulance and inhalator services, including, but not limited to, emergency medical services and rescue and ambulance services.” The language used throughout Section 5.01 tracks language used in state law regarding the powers of villages and townships relating to fire protection and emergency services. For example, under MCL 41.711, townships are authorized to operate or furnish an ambulance and inhalator service for the use and benefit of townships residents. Accordingly, I would recommend the modified use of this statutory terminology.
- For **Section 5.02(g)** of the draft agreement, your memorandum indicated: “no one was quite sure what circumstances would come into play with this paragraph, and so could you give some explanatory examples of where a fire department would make ‘loans.’”. A fire department might, for example, use loan proceeds to jointly obtain equipment or systems with other fire departments. Or the power may never be used. This is, however, a specific power that may be exercised under Section 7 of the Urban Cooperation Act of 1967. MCL 124.507(2) authorizes an entity created under an interlocal agreement, to among other things, “make loans from the proceeds of gifts, grants, assistance funds, or bequests.” If this provision is included in the interlocal agreement, the department would have the authority to exercise the power should the circumstances ever arise.
- For **Section 5.05** of the draft agreement, your memorandum indicated: “We were not certain how to phrase it, and whether it needs to be in this agreement, but were the entity to start charging service fees, then the community in which the event occurred that gave rise to the serviced fee, should get some kind of credit given that each community pays in accord with the fire runs within their own community. Any suggestions?” Under current state law the department would not be authorized to adopt an ordinance to impose service fees at the department level. If state law changes, the department could adopt an ordinance that included a mechanism to credit communities for service fees collected. By including this provision in the agreement, if state law does change in the future, and the department is allowed to adopt an ordinance, an amendment to the interlocal agreement would not be required.



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I trust that this information is helpful. If the group has any questions regarding these materials, please do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC


Steven C. Liedel

Enclosures

